

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

PROMOTE INNOVATION LLC,	)	
	)	Case No. 2:10-cv-234
Plaintiff	)	
	)	COMPLAINT FOR
v.	)	FALSE PATENT MARKING
	)	
ZODIAC POOL SYSTEMS, INC.,	)	<u>JURY TRIAL DEMANDED</u>
	)	
Defendant.	)	

Plaintiff PROMOTE INNOVATION LLC alleges as follows:

NATURE OF THE CASE

1. This is an action for false patent marking under Section 292 of the Patent Act (35 U.S.C. § 292). This action is filed by PROMOTE INNOVATION LLC as a *qui tam* relator on behalf of the United States of America.

PARTIES

2. Plaintiff PROMOTE INNOVATION LLC is a Texas limited liability company with a principal place of business in Houston, Texas.

3. Defendant ZODIAC POOL SYSTEMS, INC. is a Delaware corporation.

JURISDICTION AND VENUE

4. The Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over defendant. Defendant conducts business within the State of Texas. Defendant offers for sale, sells, marks, and/or advertises the products that are the subject of this complaint in the United States, the State of Texas, and the Eastern District of Texas.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a).

FACTS

7. Defendant has falsely marked and/or continues to falsely mark its Polaris pool products (including at least its Polaris 380 product and its PVS 280 Polaris All Purpose Bags) with United States patents, including at least U.S. Patent No. 4,589,986 and/or U.S. Patent No. 4,558,479.

8. U.S. Patent No. 4,589,986 expired on May 20, 2003.
9. U.S. Patent No. 4,558,479 expired on December 17, 2002.
10. It was a false statement for defendant to mark its Polaris pool products with expired or otherwise inapplicable patents.
11. Defendant has decades of experience applying for patents, obtaining patents, licensing patents, and/or litigating in patent infringement lawsuits. Defendant's patents, including U.S. Patent No. 4,589,986 and U.S. Patent No. 4,558,479, were prosecuted by sophisticated legal counsel.
12. Defendant knows that a patent that is expired does not cover any product.
13. Defendant knew that it was a false statement to mark its Polaris products with expired or otherwise inapplicable patents.

#### CLAIM

14. For the reasons stated in paragraphs 7 to 13 above, defendant has violated section 292 of the Patent Act by falsely marking its products with intent to deceive the public.

#### PRAYER FOR RELIEF

Plaintiff thus requests this Court, pursuant to 35 U.S.C. § 292 to do the following:

- A. Enter judgment against defendant and in favor of plaintiff for the violations alleged in this complaint;
- B. Order defendant to pay a civil monetary fine of \$500 per false marking offense, or an alternative amount a determined by the Court, one-half of which shall be paid to the United States;
- C. Grant plaintiff such other and further relief as it may deem just and equitable.

#### JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: July 9, 2010

Respectfully submitted,

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